IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 6339 of 2006

Date of Decision: 6.02.2007

Neelam and Anr. ...Petitioners

Vs.

Chhabil Dass & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Shekhar Mudgal, Advocate,
for the petitioner.

Vinod K.Sharma, J. (Oral)

By way of present revision petition, the petitioners have challenged the order passed by the learned Motor Accident Claims Tribunal, Kaithal (for short the Tribunal) vide which the application moved by the petitioners herein to withdraw the amount of FDR Nos.0486486 and 0486487 dated 28.1.2006 has been dismissed.

The petitioners i.e. the widow and mother of the deceased sought release of the amount of compensation awarded to them by the Tribunal and deposited in the Nationalized Bank in the FDRs. The petitioners had claimed the release of the said amount to discharge debt incurred for the treatment of the deceased. The learned Tribunal rejected the

claim of the petitioners merely on the ground that they failed to produce any document regarding the receipt of loan. It may further be noticed here that though in the application claim was also made that the petitioners would like to start a Kirana shop to earn their livelihood but no finding on the said plea has been recorded.

The learned counsel for the petitioners has challenged the said order primarily on the ground that in spite of evidence having been brought on record, the learned Tribunal has rejected the application without recording any finding regarding their requirement. Reliance was also placed on the judgment of Hon'ble Supreme Court in the case of **H.S.Ahammed Hussain Vs. Irfan Ahammed 2002 (3) P.L.R. 297** to contend that the petitioners being adult could not be refused the withdrawal of the FDRs prematurely. Para No.8 of the said judgment on which reliance has been placed is reproduced as follows:-

> "8. Learned counsel for the appellant lastly submitted that the amount of compensation payable to mothers of the victims should not have been directed to be kept in fixed deposit in a nationalised bank. In the facts and circumstances of the present case, we are of the view that the amount of compensation awarded in favour of the mothers should not be kept in fixed deposit in a nationalised bank. In case the amounts have not been already invested, the same shall be paid to the mothers, but if, however, invested by depositing the same in fixed deposit in a nationalised bank, there may be its premature withdrawal in case the parties so intend."

In order to appreciate the contention of the learned counsel for the petitioners it would be appropriate to notice the law regarding depositing of compensation payable to the claimants. The Hon'ble High Court of Gujarat in the case of **Muljiphai Ajarambhai Harijan Vs. United India Insurance Co. Ltd. 1982(1) (23) Gujarat Law Reporter 756** was pleased to lay down certain guide-lines. The said guide-lines were approved by the Hon'ble Supreme Court in the case of **Union Carbide Corporation, etc., etc., Vs. Union of India, etc. etc. AIR 1992 Supreme Court 248.** The relevant portion of the said judgment reads as under:-

> "105. In the matter of disbursement of the amounts so adjudicated and determined it will be proper for the authorities administering the funds to ensure that the compensation-amounts, wherever the beneficiaries are illiterate and are susceptible to exploitation, are properly invested for the benefit of the beneficiaries so that while they receive the income therefrom they do not, owing to their illiteracy and ignorance, deprive themselves of what may turn out to be sole source of their living and sustenance for the future. We may usefully refer to the guidelines laid down in the case of Muljibhai Ajarambhai Harijan Vs. United India Insurance Co. Ltd. 1982 (1) 23 Guj LR 756. We approve and endorse the guidelines formulated by the Gujarat High Court. Those guidelines, with appropriate modifications could usefully be adopted. We may briefly recapitulate those guidelines.

(i) The claims Commissioner should in the case of minors, invariably order the amount of compensation awarded to the minor to be invested in long term fixed deposits at least till the date of minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Commissioner should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any moveable or immovable property such as, agricultural implements, assets utilisable to earn a living, the Commissioner may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Commissioner should ordinarily resort to the procedure set out in (ii) above unless he is satisfied that the whole or part of the amount is required for expanding any existing business or for purchasing some property for earning a livelihood.

(iv) In the case of widows the Claims Commissioner should invariably follow the procedure set out in (i) above;

(v) In personal injury cases if further treatment is necessary withdrawal of such amount as may be necessary for incurring the expenses for such treatment may be permitted.

(vi) In all cases in which investment in long terms fixed

deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be.

It should be stipulated that the FDR shall carry a note on the face of the document that no loan or advance will be allowed on the security of the said document without express permission.

(vii) In all cases liberty to apply for withdrawal in case of an emergency should be available to the claimants."

This view of the Hon'ble Supreme Court was again reiterated in the case of **Lilaben Udesing Gohel Vs. The Oriental Insurance Company Ltd. 1996 (3) R.C.R. (Civil) 18.** Para No.17 of the said judgment reads as under:-

"17. Before we part we must observe that even though the guidelines laid down in Muljibhai's case have been approved and applied by this Court in the aforementioned two cases, many Motor accidents Claims Tribunals and even some of the High Courts in other parts of the country do not follow them. We are also told that in claims that are settled in or outside the Court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement

> between the parties the Court/Tribunal must apply these guidelines. We must add one further guideline to the effect that when the amount is invested in a fixed deposit,the bank should invariably be directed to affix a note on the Fixed Deposit Receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be up to 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the Courts/Tribunal in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the Courts/Tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the Courts/Tribunals."

This view of the Hon'ble Supreme Court has been consistently followed and guide-lines as laid down in the **Union Carbide Corporation, etc., etc., Vs. Union of India, etc. etc. (supra)** are being enforced. Even the judgment of Hon'ble Supreme Court in **H.S.Ahammed**

Hussain Vs. Irfan Ahammed (supra) is on the facts of the said case and does not lay down the law that in every case an adult member is entitled to withdraw the FDR as was sought to be contended.

Accordingly, it is held that the withdrawal of FDR can only be allowed in the facts and circumstances of each case as per the guide-lines laid down in the case of **Union Carbide Corporation, etc., etc., Vs. Union of India, etc. etc. (supra)** and not on the mere asking of the applicant. In view of this finding each case has to be decided on its own merit.

In the present case, it would be seen that the release of FDRs was sought for repayment of loan as also to set up Kirana business. Thus, in the present case the need was genuine and therefore, the learned Tribunal ought to have allowed the release of the FDRs in favour of the petitioners.

Accordingly, this revision is allowed. The impugned order is set aside and the petitioners are permitted to withdraw premature release of the FDRs referred to above.

(Vinod K.Sharma)
Judge

February 6,2007
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